

OI Assessment Report 202400531 – Nestle New Zealand Limited

Ki / To: Emma Kelly
Mai / From: Kynsléy Nazareth

Rā / Date: 20 September 2024
Rā Mutunga/ 5 November 2024
Deadline

Pūtake/Purpose

We seek your decision on an application for consent to acquire an interest in sensitive land under the Overseas Investment Act 2005 (**Act**).

Summary

Applicant	Nestle New Zealand Limited Switzerland (46.6%); United States of America (31.2%); Various (16.2%); Germany (6%);
Vendor	Ma Corazon Borg; Melvin Charles Maas and Christine Anne Maas New Zealand (100%)
Land	Approximately 1315 square metres of land located at 57 King Street, Marton, Rangitikei. Approximately 1315 square metres of land located at 59 King Street, Marton, Rangitikei.
Consideration	\$1,170,000
Sensitivity	Residential (but not otherwise sensitive) land ¹
Pathway	Residential land development – non-residential use
Relevant tests	Investor test ² Non-residential use test ³ National interest criterion ⁴

¹ Table 1, Part 1, Schedule 1 of the Act

² Sections 16(1)(a) and 18A of the Act.

³ Section 16(1)(b)(i)(C)

⁴ Section 16(1)(g) of the Act.

Nestlé New Zealand Limited is a wholly owned subsidiary of Nestlé S.A which is the world's largest food and beverage company, based in Switzerland. Nestlé S.A engages in the production and sale of a large variety of products, including pet food.

Nestlé New Zealand Limited has an existing pet food factory in Marton and seeks to acquire two neighbouring properties adjacent to this factory. The properties will be cleared and used as a logistics operation area and accessway for the factory.

Timing

A decision is required by 25 September 2024 to comply with the expectation in the Ministerial Directive Letter⁵ that the majority of consent decisions are made within half the prescribed assessment timeframe.⁶

Decision

1. I have determined that, for the reasons set out in this report:
 - the relevant overseas person(s) and individuals with control are as set out in the report;
 - the investor test has been met; and
 - the non-residential use test is met.
2. I note that the transaction is not considered to be a transaction of national interest.
3. I therefore **grant consent** subject to the conditions in **Attachment 1**.

[s 9(2)(a)]

Emma Kelly

Principal Customer Regulatory Specialist

Overseas Investment – LINZ

Date: 20 September 2024

⁵ Dated 6 June 2024.

⁶ The assessment timeframe for this application is 55 working days.

A. Background and proposed transaction

4. Nestle New Zealand Limited⁷ (**Applicant**) operates a pet food factory in Marton, Rangitekei (**Marton Factory**). The Applicant is ultimately owned by Nestlé S.A (**NSA**), based in Switzerland. The Applicant has applied to acquire two properties adjacent the Marton Factory to support its existing pet food manufacturing business (**Investment**).
5. The Investment will provide vital access to the Marton Factory as currently, it can only be accessed through land leased from a third party. If this lease were to end, the Applicant will be unable to maintain safe access and egress for heavy trucks and separate foot traffic. Therefore, the Investment and the proposed non-residential use is for functional and safety purposes; and will also help to ensure the long-term operation of the Marton Factory.
6. The two properties are 57 King street, Marton and 59 King street, Marton owned by Ma Corazon Borg⁸, and Melvin Charles Maas and Christine Anne Maas.⁹ The sale and purchase agreements are not interdependent but were signed around the same time.

Land

7. The 57 King Street, Marton¹⁰ and 59 King Street, Marton¹¹ properties are freehold, with each being 1315 square metres, collectively 0.263 hectares (**Land**).
8. An aerial photograph of the Land is included below. A map of the wider location is included in **Attachment 3**.

⁷ NZ Limited Company #46423 incorporated on 04 October 1926

⁸ Sale and Purchase Agreement dated 21 February 2024

⁹ Sale and Purchase Agreement dated 8 March 2024

¹⁰ Record of Title WN334/142

¹¹ Record of Title WN334/75



Figure 1: The Land with the adjacent Marton factory

B. Application of the Act

9. The Land is sensitive because it is residential (but not otherwise sensitive) land under the Act,¹² so consent is required.¹³ The following criteria for an investment in sensitive land apply to this application:¹⁴
- The investor test must be met.¹⁵
 - The relevant residential test must be met, which in this case is the non-residential use test.¹⁶

¹² Schedule 1 of the Act, Part 1, Table 1.

¹³ Under sections 10(1)(a) and 12(1)(a)(i) of the Act.

¹⁴ Set out in section 16(1) of the Act.

¹⁵ Section 18A / 16(1)(a) of the Act.

¹⁶ Section 16(1)(b)(i).

- You must also note whether the Investment is a transaction of national interest and, if so, whether the Minister of Finance has decided that the Investment is contrary to New Zealand's national interest.¹⁷
10. In order to satisfy the non-residential use test, the decision-maker must be satisfied that the Land will be, or is likely to be:¹⁸
- used for non-residential purposes in the ordinary course of business for the relevant business;¹⁹ and
 - not used, nor held for future use, for any residential purposes.²⁰
11. We assess the investor test in **Part C**, the relevant residential test in **Part D**, and discuss national interest matters in **Part E**.

C. Applicant and investor test

12. This section describes the Applicant and assesses whether the investor test is met.

Business Activities

13. The Applicant is a subsidiary of Nestlé S.A and part of the Nestlé Group of businesses worldwide. Nestlé is primarily involved in the production, marketing, and sale of a large variety of food and beverage products, pet food, and healthcare nutrition products.
14. The Applicant is based in Auckland, and has several factories throughout New Zealand, including its Marton Factory. The Marton Factory manufactures a range of pet food products including the well-known brand Tux. It employs almost 60 team members and has been a part of the Marton community since 1965.

Ownership and control

15. The Applicant is wholly owned by Swiss company Société des Produits Nestlé S.A (**SPN**). SPN's sole shareholder is NSA, which is the ultimate holding company of the Nestlé group of companies. NSA is listed on the SIX Swiss Exchange, Switzerland. It has a single class of shares on issue, which are widely held.
16. Black Rock Inc²¹ holds a 5.04% beneficial ownership interest in the Applicant. A diagram of the intended ownership structure is in **Attachment 2**.
17. The Marton Factory sits within the Nestlé Purina Petcare (**NPP**) business division of SPN. The NPP division in NZ has limited engagement with SPN and effectively operates as its own

¹⁷ Section 16(1)(g) of the Act.

¹⁸ Schedule 2, Part 3 of the Act, clause 13.

¹⁹ Schedule 2, clause 13(1)(a) of the Act.

²⁰ Schedule 2, clause 13(1)(b) of the Act.

²¹ Black Rock is a multinational investment manager based in New York, USA; and is the world's largest investment management company

business, although it still forms part of the SPN legal entity. The Applicant is responsible to the NPP Head of Zone Asia, Oceania and Africa, Mr. Hubert Wieser.

Relevant overseas person and individuals with control

18. We recommend that the '**relevant overseas person**' is collectively:

Relevant overseas person* ²²	Reason
Nestle New Zealand Limited*	The Applicant
Société des Produits Nestlé S.A.*	100% owner of the Applicant

19. We recommend that the '**individuals with control of the relevant overseas person**'²³ are:

Individuals with control	Reason
Jennifer Linda Chappell ²⁴	CEO of the Applicant.
John Michael Davis ²⁵	Director of the Applicant
Michael Gregory Kane*	
Sandra Edit Martinez Penaloza*	
Tony Mendes Domingo	
Hubert Wieser	Head of Nestlé Purina Petcare division of SPN

Summary of investor test

20. The relevant overseas persons and individuals with control established none²⁶ of the factors contained in section 18A(4) of the Act.
21. For the reasons set out above, our conclusion is that **the investor test has been met.**

D. Investment plan and residential test

22. This section describes the Investment and our assessment of whether it is likely to meet the relevant residential test in the Act.

²² ROPs and IWCs marked with an asterisk are repeat ROPs/IWCs, having met the Investor Test requirements prior – Case 202200294.

²³ Section 15 of the Act.

²⁴ New Zealand citizen.

²⁵ New Zealand citizen.

²⁶ In 2022, the Marton factory was issued two infringement notices by Horizons Regional Council for odour issues, however these matters do not establish any of the factors in s18A(4) of the Act.

Investment plan

23. The Applicant seeks to acquire the Land to support its relevant business at the adjacent Marton Factory, being the manufacturing of pet food (**Relevant Business**).
24. The Sale and Purchase Agreements for the Land were entered into on 21 February 2024 for the 57 King Street property and 8 March 2024 for the 59 King Street property. The agreements are not interdependent, however they are considered to be one investment due to the location of the Land, the timing of the acquisition, and the intended use of the Land in support of the Relevant Business.
25. The Applicant intends to clear the Land for use as a logistics operation area and accessway for the Marton Factory.

Non-residential use test

26. This section considers what business will be undertaken on the Land and, as a result, whether the Land is likely:
 - to be used for non-residential purposes and
 - not be used or held for residential purposes.
27. The Relevant Business has operated since 1965 and is likely to continue for a reasonable period of time. The Applicant has confirmed the Land will be used for non-residential purposes as a logistics area and accessway in support of the Relevant Business.
28. Upon settlement, the Applicant has confirmed the Land will not be occupied and will be fenced off prior to being cleared for use in support of the Relevant Business. LINZ is satisfied that the Land will not be used, nor held for future use, for any residential purposes because the Land will be cleared.
29. LINZ considers that the non-residential use test is met as the Land will or is likely to be used for non-residential purposes in the ordinary course of business for the Relevant Business; and not used, nor held for future use for any residential purpose.

Proposed conditions and rationale

30. Conditions have been imposed to secure the non-residential use, the non-occupation outcome and the completion of developmental work for the logistics operation and access way areas.

E. **Not a transaction of national interest**

31. The Investment does not involve a transaction of national interest under the mandatory criteria of the Act.²⁷ This is because the land is residential (but not otherwise sensitive) so the

²⁷ Under s 20A of the Act.

exemption for non-NZ government investors applies,²⁸ and the Investment is not an investment in a strategically important business (as defined in the Act).

32. The Minister of Finance has not called the Investment in for a national interest assessment.²⁹

F. Conclusion

33. For the reasons set out in this report, we consider that the criteria for consent have been met and our recommendation is to grant consent.
34. We refer you to **Attachment 1** to review the Proposed Decision (including consent conditions), and from page 2 of this Assessment Report to record your decision.

G. Attachments

1. Proposed Decision
2. Intended ownership structure
3. Location Map

Released under the Official Information Act 1982

²⁸ Under r 3D(2) of the Overseas Investment Regulations 2005.

²⁹ Section 20B of the Act

ATTACHMENT 1 PROPOSED DECISION

Consent for Overseas Person to Acquire Sensitive New Zealand Land

Read this consent carefully - you must comply with all the conditions. If you do not, you may be required to dispose of the land and/or be subject to fines or other penalties.

Consent

Decision date: 20 September 2024

The following people have been given the following consent:

Case	202400531
Consent holder/s	Nestlé New Zealand Limited (company number 46423) We will also refer to each Consent holder and the Consent holders together as you .
Consent	The Consent holder may acquire the Land subject to the conditions set out below.
Land	A freehold interest in approximately 1315 square metres of land located at 57 King Street, Marton, Rangitikei, contained in Record of Title WN334/142 (Wellington). A freehold interest in approximately 1315 square metres of land located at 59 King Street, Marton, Rangitikei, contained in Record of Title WN334/75 (Wellington).
Timeframe	You have until 31 October 2025 to acquire the Land.

Conditions

Your Consent is subject to the Special conditions, Standard conditions and Reporting conditions (**Conditions**) set out below. You must comply with them all. Be aware that if you do not comply with the Conditions, you may be subject to fines or other penalties, and you may also be required to dispose of the Land.

In the Consent and the Conditions, we refer to Toitū Te Whenua Land Information New Zealand as **LINZ, us or we**.

Definitions

Act means the Overseas Investment Act 2005.

Development means fencing off the Land and doing the work required to convert the Land to a logistics operations and access way area, including a container set-down area.

Regulations means Overseas Investment Regulations 2005.

Relevant business means the business of the Consent holder being pet food manufacturing activities at the Marton Factory.

Any term or expression that is defined in the Act or Regulations and used, but not defined, in this Consent has the same meaning as in the Act or Regulations.

Special conditions

You must comply with the following **special conditions**. These apply specifically to this Consent and include conditions that we must impose under the Act:

Details	Required date
Special condition 1: Use the Land for Non-residential purposes only	
You must: 1. use the Land for non-residential purposes in the ordinary course of business for the Relevant Business; and 2. not use or hold the Land for any residential purposes.	At all times
If you do not comply with this condition, Standard Condition 6 will apply, and we may require you to dispose of the Land.	

Special condition 2: Development Milestones

You must:

i. Fence off the Land

i. As soon as possible after settlement of the Land, and no later than three months following settlement.

ii. Complete Development on the Land

ii. By 31 October 2026

If you do not comply with this condition, Standard Condition 6 will apply, and we may require you to dispose of the Land.

Special condition 3: Non-occupation outcome

None of the following people may occupy the Land acquired under this consent for residential purposes:

- a) You
- b) Any overseas person with more than 25% ownership or control of the people in you;
- c) Any overseas person that occupies the Land on other than arms length terms;³⁰
- d) Any overseas person who has a beneficial interest in, or beneficial entitlement to, the relevant interest in the Land;
- e) If you are a trust, any beneficiary (direct or indirect) who may benefit under the trust at the trustees' discretion.

At all times

If any such persons do occupy land for residential purposes, Standard Condition 6 will apply, and we may require you to dispose of the Land.

³⁰ Has the meaning in clause 17, Part 5, Schedule 2 of the Act. In summary it means terms, for example under a lease (or other contract), that are on a reasonable commercial basis.

Standard conditions

You must also comply with the **standard conditions** set out below. These apply to all overseas people who are given consent to acquire sensitive New Zealand land, including you:

Details	Required date:
Standard condition 1: Acquire the Land	
<p>You must acquire the Land:</p> <ol style="list-style-type: none"> By the date stated in the Consent. If you do not, your Consent will lapse or become invalid and you must not acquire the Land, and Using the acquisitions, ownership and control structure you described in your application. Note, only you-the named Consent Holder may acquire the Land, not your subsidiary, trust or other entity. 	As stated in the Consent
Standard condition 2: Tell us when you acquire the Land	
<p>You must tell us in writing when you have acquired the Land.</p> <p>Include details of:</p> <ol style="list-style-type: none"> The dates you acquired the Land (Settlement) Consideration paid (plus GST if any) The structure by which the acquisition was made and who acquired the Land, and Copies of any transfer documents and Settlement statements. 	As soon as you can, and no later than 2 months after Settlement of the Land
Standard condition 3: Allow us to inspect the Land	
<p>Sometimes it will be helpful for us to visit the Land so we can monitor your compliance with the Conditions.</p> <p>We will give you at least 2 weeks written notice if we want to do this.</p> <p>A. You must then:</p> <ol style="list-style-type: none"> Allow a person we appoint (Inspector) to: 	At all times

- a. enter onto the Land, including any building on it, other than a dwelling, for the purpose of monitoring your compliance with the Conditions **(Inspection)**
- b. remain there as long as is reasonably required to conduct the Inspection
- c. gather information
- d. conduct surveys, inquiries, tests and measurements
- e. take photographs and video recordings and
- f. do all other things reasonably necessary to carry out the Inspection
- ii. Take all reasonable steps to facilitate an Inspection including:
 - a. directing your employees, agents, tenants, or other occupiers to permit an Inspector to conduct an Inspection
 - b. being available, or requiring your employees, agents, tenants, or other occupiers to be available, at all reasonable times during an Inspection to facilitate access onto and across the land. This includes providing transport across the Land if reasonably required.
- B. During an Inspection:
 - i. We will not compel you and your employees, agents, tenants or other occupiers to answer our questions or to let us look at, copy or take away documents
 - ii. Our Inspector will comply with any reasonable instruction and cooperate with any reasonable health and safety policy or procedure you notify to us before the Inspection.

Standard condition 4: Remain not unsuitable to invest in New Zealand	
<p>You, and to the extent that you are not an individual, the Individuals Who Control You must remain not unsuitable to own or control the Land in accordance with section 18A(1) of the Act</p> <p>The Individuals Who Control You are individuals who:</p> <ul style="list-style-type: none"> i. Are members of your governing body ii. Directly or indirectly, own or control more than 25% of you or a person who itself owns or controls more than 25% of you, and iii. Are members of the governing body of the people referred to in ii above. 	At all times
Standard condition 5: Tell us about the changes that affect you, the people who control you, or people you control	
<p>You must tell us in writing if any of the following events happen to any of the Consent Holders:</p> <ul style="list-style-type: none"> i. You become aware that you and/or any Individual Who Controls you establishes any of the investor test factors listed in section 18A(4) of the Act. ii. You cease to be an overseas person or dispose of all or any part of the Land iii. Your New Zealand service address changes. This is the address you provided us in your application as the address which we will send any legal document we need to serve on you. 	Within 20 working days after the change
Standard condition 6: Dispose of the Land if you do not comply with key special conditions	
<p>If all or part of this Standard Condition 6 applies to a special condition, we have said so in that special condition.</p> <p>If we consider you have failed to comply with one of those special conditions in a material way, we may require you to dispose of the Land.</p>	

<p>We will give you written notice if we require you to dispose of the Land. After we have given you notice, you must:</p> <ul style="list-style-type: none"> i. Value the Land: obtain and send us a copy of a market valuation of the Land from a New Zealand registered valuer. ii. Market the Land: instruct a licensed real estate agent to actively market the Land for sale on the open market. iii. Dispose of the Land: dispose of the Land to a third party who is not your associate. iv. Offer without reserve: if you have not disposed of the Land within 6 months of our notice, offer the Land for sale by auction or tender without a reserve price or minimum bid and dispose of the Land. v. Report to us about marketing: tell us in writing about marketing activities undertaken and offers received for the Land. vi. Report disposal to us: send us, in writing, evidence of the following: <ul style="list-style-type: none"> a. That you have disposed of the land (including copies of sale and purchase agreements, settlement statements and titles showing the purchaser as registered proprietor) and b. That the purchaser is not your associate. 	<p>Within 6 weeks of the date of our notice</p> <p>Within 6 weeks of the date of our notice.</p> <p>Within 6 months of our notice</p> <p>Within 9 months of our notice</p> <p>By the last day of every March, June, September, and December after our notice or at any other time we require</p> <p>Within 1 month after the Land has been disposed of</p>
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Reporting conditions

We need information from you about how your investment plan is tracking so we can monitor your progress against the conditions.

In addition to Settlement reporting (as set out in Standard Condition 2) you must provide LINZ with reports detailing the progress of the investment. The reports must:

- i. be submitted via our [Webform](#) by these dates:
 - a. 31 January 2026
 - b. 30 November 2026
- ii. contain information about your progress in implementing the special conditions (which can include photographs, maps or aerial imagery as evidence of compliance with relevant conditions)
- iii. Follow the format of the template annual report published on our website

If requested in writing by LINZ, the Consent Holder(s) must provide a written report within 20 working days (or such other timeframe as specified) on any matter relating to its compliance with:

- i. the representations and plans made or submitted in support of the application and notified by the regulator as having been taken into account when the consent was granted, or
- ii. the conditions of this consent.

Power to vary reporting date

The dates on which reports are due to be provided may be changed by agreement between LINZ and the Consent Holder(s), provided that this power may not be used to give a time extension for an individual report.

Power to narrow scope of reports

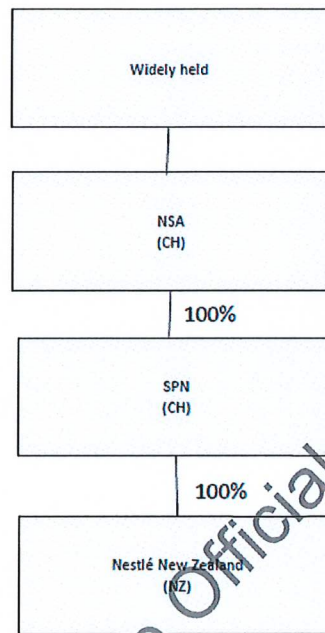
LINZ may temporarily or permanently waive the requirement to report on a particular matter.

Power not to require further reporting

LINZ may waive the requirement to submit a report and may waive the requirement for future reporting.

ATTACHMENT 2 INTENDED OWNERSHIP STRUCTURE

Nestlé New Zealand Structure Diagram



ATTACHMENT 3 LOCATION MAP

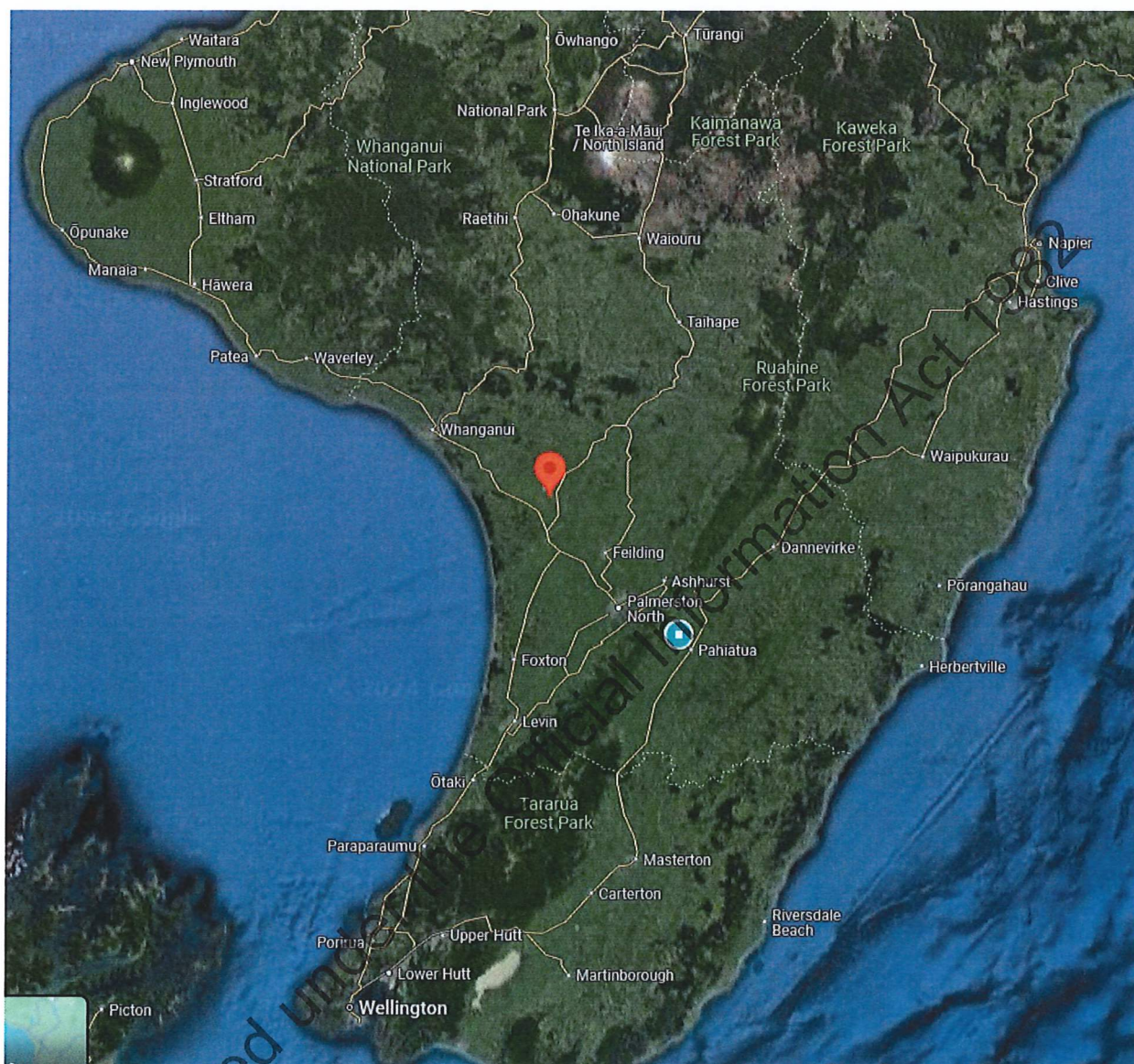


Figure 2 – location of the Land